IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.224 OF 2004

Prakash Pandurang Kurup & Ors. ...Appellants

vs.

Ravindra Tukaram Pawaskar & Ors. ...Respondents

CORAM: A.S.OKA,J.
DATE : APRIL 4,2005.

P.C.:

1. Heard Advocates for the parties. The Appeal from Order is by original Plaintiffs. An Application for temporary injunction made by the Appellants-Plaintiffs at Exh.8 was rejected by the impugned order. By the said order, an application made by the Respondent Nos.1 and 2 at Exh.56 has been allowed. The Respondent Nos.1 and 2 are original Defendant Nos.1 and 2. The learned Trial Judge has restrained the Appellants or any other person claiming under them from interfering with possession of the Respondent Nos.1 and 2 over the suit property. On 16th February 2004 this Court passed ad-interim order directing the parties to maintain status quo.

2. The learned Counsel for the Appellants invited my attention to various findings of the Trial Court including the finding that the Appellants produced keys of the locks put on the suit property. He submitted that in view of this factual position, it cannot be said that the Respondent Nos.1 and 2

were in possession of the suit property. The learned Counsel for the Respondent No.1 has supported the impugned Judgment and order.

3. The learned Trial Judge has considered the several documents on record including sale deed executed in favour of the original Defendant No.3 on 31st December 2001. There is another registered sale deed dated 19th June 2002 executed by the original Defendant No.3 in favour of the original Defendant Nos.1 and 2. After considering the registered sale deeds on record, the learned Trial Judge has come to a prima facie conclusion that the original Defendant Nos.1 and 2 are in possession of the suit property.

4. The impugned Judgment and order is operating from 17th January 2004. The impugned Judgment and Order is passed after consideration of the documentary evidence on record. The question regarding legality and validity of the sale Deeds will have to be gone into by the Trial Court at time of final result of the suit. The prima facie findings recorded by the Trial Court are based on documentary evidence on record. Unless the same shown to be perverse, no interference is called for.

5. In my view considering the sale deeds on record, the learned Trial Judge has recorded a prima facie finding accepting the possession of original Defendant Nos.1 and 2.

No interference is therefore is called for with the impugned Judgment and Order. However, as the said suit is pending, original Defendant Nos.1 and 2 must maintain status quo in all respects in respect of the suit property till the disposal of the suit.

6. Hence I pass the following order :

i) The impugned Judgment and Order is confirmed subject to modification that till the disposal of the suit the original Defendant Nos.1 and 2 will maintain status quo in all respects in respect of the suit property.

ii) The learned Trial Judge will hear and decide the suit expeditiously without being influenced by impugned Judgment and Order and confirmation thereof by this Court.

iii) Appeal from Order is disposed of in above terms with no order as to costs.

iv) Parties to act upon authenticated copy of this order.

JUDGE.